



ANALYSIS OF INSOLVENCY AND BANKRUPTCY CODE 2016 AND COVID-19 PANDEMIC IMPACT: AN IN-DEPTH STUDY

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ABSTRACT

The concept of insolvency & Bankruptcy is a way of providing relief to the justified entity under the unforeseen event. There is no single umbrella legislation in India that governs the insolvency and bankruptcy proceedings. legislation governing the legal framework pertaining to insolvency and bankruptcy in India is contained in a remarkable length of laws. Indian Insolvency era had undergone a remarkable change with the coming of Banking & Insolvency Act 2016. This research paper explains about the key aspect of the 2016 Code and also the challenges faced by the executors in executing the procedures provided under this legislature. This paper also contains a saturated analysis of the impact of COVID- 19 over Indian Insolvency & Bankruptcy System and the amendment which brought insolvency ordinance 2020.

KEYWORDS : Insolvency, Bankruptcy, COVID-19

INTRODUCTION:

When in a transaction of business and trading when the entity becomes unable to meet its obligation of paying the due debt or fails to comply with the same, he becomes insolvent and falls under the view of insolvency. Bankruptcy arises when the competent court determines insolvency and provides order regarding to resolving for such.

Summarizing both the definitions its can be concluded that When the debtor fails to comply with the financial obligation he becomes insolvent and when the legal framework under which he asks for relief is called a bankruptcy. Sometimes the situation falls out hand for the debtor in the course of an unforeseen or unfortunate event which makes him unable for the obligation and fails to pay back their debts. So, the law try to lighten the liability of debtor under creation conditions regarding to his debts and obligations.

The Insolvency & Bankruptcy Code 2016

In India the regulation of Insolvency & Bankruptcy used to comply through several legislatures and enactments. All those laws provided the regulations and procedures for the determination of insolvency in a simplified way. So multiple laws which contained the regulatory framework were Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Companies Act, 2013. All these regulatory frameworks dealt with individuals and several legal entities in India.

That time the jurisdiction was held at various stages through the courts and Tribunals such as High Courts, District Courts, the Company Law Board, and the Board for Industrial and Financial Reconstruction (BIFR) and the Debt Recovery Tribunals (DRTs). Subsequently the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920 used to deal with the Individual Cases on the other hand Liquidation of companies was dealt by the High courts.

Pertaining to all those laws and procedures it became difficult for the judicial as the process became complex & brought systematic delay. For analyzing the framework Banking Law Reforms Committee for IBC was made. The committee submitted its report to the finance minister on 4th November 2014 under chairman DR T.K Viswanathan. Based on the report of the committee the Insolvency & Bankruptcy code 2016 came into per view.

RESEARCH OBJECTIVE:

- To Comprehend the concept of Insolvency and Bankruptcy Code 2016.
- To analyses the various impact of COVID-19 impact on Insolvency and Bankruptcy Code.

LIMITATIONS OF THE STUDY:

This study is limited to the number of research articles and books referred.

The core objective of Insolvency and Bankruptcy Code 2016 is to amend the laws for enhancing the procedure in a more simplified form within a stipulated time period for avoiding delay. The amendment focuses on the reconstruction and resolution of insolvency of corporate persons, individuals & partnership firms and consolidation of laws regarding the same. It primarily objected in maximization of assets by regulating a bound time frame. The code prioritized the payment of government dues simultaneously constructing the Insolvency and Bankruptcy Fund which in turn contribute in the development of the credit market and enhancing the entrepreneurship. The availability of credit becomes easier for the stakeholders balancing their interest.

The simpler Regulation and secured transaction, credibility will be provided through the Code which will enhance the possibility of creating business entities, and this will facilitate more investment, all these resolutions will tend to impact the economic growth in a more positive way and thus enhance development. The procedure followed by the initiation taken by either financial creditor or by operational creditor or by the corporate debtor when the default in furnishing the financial obligation occurs An insolvency resolution process can be initiated by either a financial creditor or by operational creditor or the corporate applicant (corporate debtor) upon an event of default. A revival plan is resolved within 180 days from the admission of the application. Making this process time bound is very essential as the value of the assets can erode substantially with the passage of time. In the event of disagreement or if a decision is not taken within the stipulated time-frame the applicant automatically moves to the next stage of Insolvency Process.

Matter Of Concern Before The Code 2016

The procedure of insolvency takes place under the administration of Insolvency Professionals (IPs) who were regulated under the Insolvency Professional Agencies under guidance and supervision of The Bankruptcy Board. Such multiplicity in regulatory bodies can bring out complexity in

the sector. It could enable the competition among the agencies. Such, unclear regulation authority might harm the goals.

The new entities bear the burden for a more specified simpler form of process without any inconvenience under the code. So, it depends on the insolvency professionals, Insolvency professional agencies and information. The proper functioning of these systems needs the involvement of the entities and periodical development which needs them to evolve over time. As the constitution of NCLT has not been completed yet regarding the matters involving Corporate Insolvency becomes overloaded with pending cases before the DRTs.

The preference for distributing the assets of the debtor during liquidation is not clearly mentioned under the code which brings confusion as to why secured creditors will receive their entire outstanding amount rather than up to their collateral value. Further the question comes as why trade creditors are given an inferior priority in comparison with unsecured creditor. Payment of government dues will get repaid after unsecured creditors under this code makes the provision ambiguous.

Impact of Covid 19 Over Insolvency & Bankruptcy

Putting into consideration the uncertain impact of the ongoing pandemic COVID 19, where the world is undergoing a recognizable economical change. The event affecting the growth of different sectors in every country and regions. Basically the business world and the corporate sector lagging back due to the delay in procedures which in turn affecting the economy in large. The Government of India also took measures regarding the restriction imposed upon the economic activity which majorly affecting the corporate sector. By considering all the factors which are uncertain and unforeseen, the Indian Government under the per view of Insolvency & Bankruptcy Code 2016 subsequently suspended the initiation of the proceeding regard to insolvency when default occurs against corporate debtors. The announcement of such suspension was made on March 24, 2020 and may 17, 2020 and the announcement got finally implemented on June 5, 2020. And the amendment bring the insolvency ordinance as the Insolvency & Bankruptcy code (amendment) ordinance 2020 with certain new provision keeping in mind the impact of COVID 19. Further the amendment extended the statutory timeline 180 days up to 270 days with regard to the completion of CIRP process or the liquidation process as per the convenience, which became pending due to the lock down circumstance under Section 12 of the Insolvency Code. It further provided the exclusion of the lock down period for any activity or task in the Corporate Insolvency Resolution Process under the per view of the code. The exclusion of such period from the statutory time line was issued through the order passed by NCLAT dated 30 March 2020.

On becoming effective the Insolvency & Bankruptcy Code (Amendment) Ordinance on June 5 2020 bring out the inclusion of creation provisions into the code keeping eye on the impact of COVID 19 for the uninterrupted insolvency process. Under this amendment Section 10 A newly inserted talks about Suspension of Initiation of Corporate Insolvency Resolution Process), it restricted financial creditors, operational creditors and corporate debtors from filing application to initiate the CIRP regard to those corporate Debtors who were in default during the period of 6 months initiating from and including 25th March 2020 on which the nation commencement of lock down got announced which may be extended up to 1 year, However, Section 10 A of the Insolvency Code will not be applicable in respect of defaults committed by the corporate debtor prior to March 25, 2020. All these above-mentioned circumstances were primary effects of

COVID 19 which impacts over the proceedings ought to start after commencement of lock down but subsequently it also has the impact over the ongoing proceedings which were pending due to the closure. There were insolvency proceedings which were initiated before the said pandemic occurred or before the announcement of national lock down.

CONCLUSION:

This study has made an attempt to understand the major features of Insolvency and Bankruptcy Code of India and COVID-19 pandemic and its impact on Insolvency. The delay occurred in those cases are getting handled by the NCLT and NCLAT. They are hearing these cases through video conferencing. In these circumstances a greater focus is required to enhancing the efficiency of existing out of court and in court restructuring mechanisms and introducing new mechanisms to preserve value.

REFERENCES:

1. <https://www.mondaq.com/india/insolvencybankruptcy/978490/impact-of-covid-19-on-proceedings-under-the-insolvency-and-bankruptcy-code-2016>
2. <https://www.financialexpress.com/economy/insolvency-and-bankruptcy-in-the-times-of-coronavirus-welcome-relief-from-im-sitharaman/1908942/>
3. <https://www.hindustantimes.com/india-news/lok-sabha-passes-amendment-in-insolvency-and-bankruptcy-code-for-firms-under-stress-due-to-covid-19/story-9r7BOTf9PgVullpxb00KdL.html>